



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
October 30, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7674 4157

Mr. and Mrs. Brian Haas
Epic Earth Systems, Inc.
10140 Pheasant Lake Rd.
South Lyon, Michigan 48178

Consent Agreement and Final Order In the Matter of
Epic Earth Systems, Inc. Docket No. **FIFRA-05-2015-0008**

Dear Mr. Haas:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on October 30, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$500 is to be paid in the manner described in paragraphs 33 Through 35. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by November 29, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, reading "Terence Bonace", is located below the "Sincerely," text.

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2015-0008
)	
Epic Earth Systems, Incorporated)	Proceeding to Assess a Civil Penalty
Sylvan Lake, Michigan,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Epic Earth Systems, Incorporated, a corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states,

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent is a Michigan corporation, with a registered office at 2360 Orchard Lake Road, Sylvan Lake, Michigan.

17. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. On February 20, 2013, an inspector employed by the Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA conducted an inspection at Hydro Vision 7, 11820 Belleville Road, Belleville, Michigan.

19. During the February 20, 2013 inspection of Hydro Vision 7, the inspector collected a sample of Epic Leaf Shield Ready-to-Use.

20. The label of Epic Leaf Shield Ready-to-Use states, “Epic Leaf Shield is scientifically formulated to put a protective shield between your garden & garden pests. One application every 30 days in vegetation will protect your precious garden from most organic pests and enhance the appearance of your garden.”

21. The label of Epic Leaf Shield Ready-to-Use states that it is distributed by Respondent.

22. Analysis of the sample of Epic Leaf Shield Ready-to-Use collected on February 20, 2013 by MDARD found 1.85 ppm abamectin. Abamectin is an insecticide and a miticide.

23. Abamectin is a pesticide, as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. Epic Leaf Shield Ready-to-Use is a pesticide, as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On August 14 and 28, 2013, inspectors employed by MDARD and authorized to conduct inspections under FIFRA conducted an inspection at Great Lakes Garden Wholesale, 6811 Miller Drive, Warren, Michigan.

26. During the August 14 and 28, 2013 inspections, the inspectors collected purchase orders for Epic Leaf Shield Ready-to-Use from Respondent to Great Lakes Garden Wholesale.

27. Each purchase order described in Paragraph 26 was stamped "Received in Full."

28. The purchase orders described in Paragraph 26 identified Respondent as the vendor.

29. The purchase orders described in Paragraph 26 are sales and/or distribution records within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

30. Respondent sold Epic Leaf Shield Ready-to-Use to Great Lakes Garden Wholesale on or about January 30, 2013 and May 15, 2013.

31. Epic Leaf Shield Ready-to-Use was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on or about January 30, 2013 and May 15, 2013.

32. Each distribution or sale of the unregistered pesticide Epic Leaf Shield Ready-to-Use constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

33. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$500. In determining the

penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$500 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

35. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Sheila McAnaney (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States

district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

40. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

41. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

42. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

43. The terms of this CAFO bind Respondent, its successors and assigns.

44. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

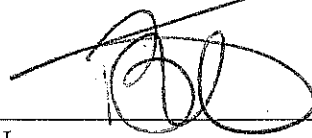
45. Each party agrees to bear its own costs and attorneys' fees, in this action.

46. This CAFO constitutes the entire agreement between the parties.

Epic Earth Systems, Incorporated, Respondent

Date

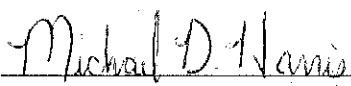
9/1/14


Brian Haas
President
Epic Earth Systems, Incorporated

United States Environmental Protection Agency, Complainant

Date

10/24/2014

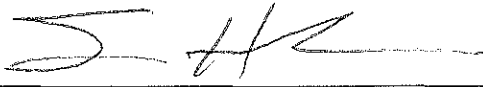
In MG

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Epic Earth Systems, Incorporated
Docket No. FIFRA-05-2015-0008

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/27/14
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Epic Earth Systems, Inc., was filed on October 30, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 4157, a copy of the original to the Respondent:

Mr. and Mrs. Brian Haas
Epic Earth Systems, Inc.
10140 Pheasant Lake Rd.
South Lyon, Michigan 48178

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Sheila McAnaney, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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